

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:
TOYSMART.COM, LLC,
Debtor.

Chapter 11
Case No. 00-13995-CJK

REPORT AND HEARING AGENDA REGARDING FIRST OMNIBUS
OBJECTION TO CLAIMS AS APPLIED TO THE CLAIMS OF SANDRA
CHAREST AND DIRECT MEDIA, INC.

To the Honorable Carol J. Kenner, United States Bankruptcy Judge:

Pursuant to MLBR 3007-1(d), Toysmart.com, LLC (the "Debtor"), by its Liquidating Supervisor, appointed under the confirmed *First Amended Liquidating Joint Plan of Reorganization* (the "Plan"), hereby submits this report and hearing agenda with respect to the pending objection to the claims of Sandra Charest ("Ms. Charest") and Direct Media, Inc. ("Direct"), as set forth in the *First Omnibus Objection to Claims and Request for Preliminary Hearing* (the "Objection").

Capitalized terms not otherwise defined have the same meaning as set forth in the Plan.

OVERVIEW

1. On June 9, 2000 ("Petition Date"), four creditors filed an involuntary petition for relief under 11 U.S.C. § 303 against the Debtor.
2. On June 26, 2000, the Bankruptcy Court entered an order for relief against the Debtor. Pursuant to 11 U.S.C. § 1102(a)(1), the United States Trustee

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appointed an Official Committee of Unsecured Creditors.

3. On February 20, 2001, the Court entered an order confirming the Plan and appointing the Liquidating Supervisor.

4. Ms. Charest filed two claims, entered in the register of claims compiled by the Clerk of this Court ("Claims Register") as claims number 205 and 210, respectively. Ms. Charest asserted a general unsecured claim in the amount of \$12,623.08 and a priority claim in the amount of \$4,300 in the claim registered as number 205. She asserted a general unsecured claim in the amount of \$12,623 and a priority claim in the amount of \$4,300 in the claim registered as number 210.

5. Direct filed two claims, entered in the Claims Register as claims number 165 and 169, respectively. The claim registered as number 165 ("Claim 165") asserted a general unsecured claim in the amount of \$222,889.61. The claim registered as number 169 asserted a priority claim in even amount.

6. The Liquidating Supervisor filed the Objection on May 3, 2001. It did *not* object to the claim of Ms. Charest registered as number 210, and the Initial Distribution included a dividend on such claim in accordance with the Plan. The Liquidating Supervisor objected to Ms. Charest's other claim, registered as number 205, on the basis that it appeared to be a duplicate claim.

7. The Objection asserted that one of Direct's claims, numbered 169 in the Claims Register, should be disallowed as duplicating another claim. As to Direct's Claim 165, the Liquidating Supervisor objected on the basis of

11 U.S.C. § 502(d) and asserted that Direct had received \$46,582 in avoidable preferential payments not since repaid to the estate. Further, the Objection recommended that this Court either disallow Claim 165 in its entirety or approve a certain preference offset procedure, wherein the Liquidating Supervisor would reserve from any Distribution on account of Direct's otherwise allowed claim an amount up to the \$46,582 alleged as an avoidable preferential payment. Finally, the Objection estimated that, exclusive of the preference offset procedure, Direct might have an Allowed claim in the amount of \$222,890.

7. This Court established August 28, 2001 as the deadline by which Ms. Charest and Direct must have responded to the Objection, and set September 5, 2001 for a hearing thereon. On July 20, 2001, the Liquidating Supervisor duly served Ms. Charest and Direct with the Objection and with notice of the deadline and hearing.

REPORT AND RECOMMENDATIONS

With respect to the Objection, the Liquidating Supervisor respectfully reports and recommends as follows:

I. Sandra Charest

As of this date, the Liquidating Supervisor has received no notice of a response from Ms. Charest, and a review of the docket available through the internet PACER service shows no docketed response. Accordingly, the Liquidating Supervisor recommends that this Court enter an order sustaining the

Objection as to the claim of Ms. Charest, entered in the Claims Register as number 205, and DISALLOW the claim entirely.

II. Direct Media, Inc.

As of this date, the Liquidating Supervisor has received no notice of a response from Direct, and a review of the docket available through the internet PACER service shows no docketed response. Accordingly, the Liquidating Supervisor recommends that the Court enter an order to DISALLOW the claim of Direct registered as number 169, and to ALLOW its Claim 165, subject to deduction, from any Distribution in respect of such claim, in the amount of \$46,582 ("Recommended Preference Offset").

As indicated in the Objection, the Liquidating Supervisor has made an Initial Distribution to claimants to the extent that the amount of the Initial Distribution on account of any Claim to which the Liquidating Supervisor has not otherwise objected exceeded any amount of a claimed preference. The Liquidating Supervisor reserved from the Initial Distribution made to any claimant asserting a claim to which the Liquidating Supervisor objected on the basis of 11 U.S.C. § 502(d) an amount up to the amount of the alleged preference.

The Liquidating Supervisor recommends that the allowed claim of Direct be increased by the amount of dividends actually withheld on account of the § 502(d) objection and the Recommended Preference Offset, and that any amounts so withheld (or which shall in the future be deducted) shall be paid into

the general funds of the estate available for distribution in accordance with the Plan.

The Objection and any orders requested by the Liquidating Supervisor shall be without prejudice to the Liquidating Supervisor's rights under the Plan to prosecute Causes of Action, including preference actions; provided, however, that the Liquidating Supervisor shall credit all amounts retained from any distribution pursuant to the order proposed herein against any preferential transfers that the Liquidating Supervisor may seek to avoid in any action under 11 U.S.C. § 547.

The Liquidating Supervisor has provided a proposed form of order for the convenience of the Court.

WHEREFORE, The Liquidating Supervisor hereby requests that this Court enter an Order:

- (i) Sustaining the Liquidating Supervisor's objection as to the claims of Sandra Charest and Direct Media, Inc., numbered in the Claims Register as 205, 165 and 169; and

(ii) Granting the Liquidating Supervisor such other and further relief
as is just.

TOYSMART.COM, LLC, by

CHRISTOPHER J. PANOS as
LIQUIDATING SUPERVISOR

By his counsel

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Dated: August 31, 2001

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:
TOYSMART.COM, LLC,
Debtor.

DOCKETED
Chapter 11
Case No. 00-13995-CJK

CERTIFICATE OF SERVICE

I, Taylor A. Greene, hereby certify that on August 31, 2001 I caused the *Report and Hearing Agenda Regarding First Omnibus Objection to Claims as Applied to the Claims of Sandra Charest and Direct Media, Inc.* (the "Report") and a proposed form of order ("Order") thereto to be served on Rick Sarli, Controller, Direct Media, Inc., 200 Pemberwick Road, P.O. Box 4565, Greenwich, CT 06830, by first-class United States mail postage prepaid.

In addition, I also caused the Report and Order to be served on the entities set forth on the attached service list at the addresses set forth thereon, including Sandra Charest c/o Guy B. Moss, Esq., Bingham Dana LLP, 150 Federal Street, Boston, MA 02110 by first-class United States mail, postage pre-paid (by delivering the Report and Order by hand to Merrill Corporation ("Merrill"), which has been engaged by Craig and Macauley to copy and mail the Report and Order on this date). Craig and Macauley shall maintain in its records an Affidavit of Service by Merrill supporting this Certificate of Service and shall

amend this Certificate of Service in the event that the Affidavit of Merrill is in
any way inconsistent with this Certificate of Service.

August 31, 2001

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August 31, 2001

BY HAND / ROUND TRIP

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Re: Toysmart.com, LLC
Chapter 11 - Case No. 00-13995-CJK

Dear Sir/Madam:

Enclosed for filing in connection with the referenced matter please find an original and one copy of the following:

1. *Report and Hearing Agenda Regarding First Omnibus Objection to Claims as Applied to the Claims of Sandra Charest and Direct Media, Inc.;*
2. *Order on First Omnibus Claims Objection Regarding Claims as to Which Claimants Failed to Respond [Sandra Charest and Direct Media, Inc.]; and*
3. *Certificate of Service.*

Please date-stamp the enclosed copies and return them to my messenger.

Sincerely,



Taylor A. Greene

TAG/pc
enclosures

cc: Christopher J. Panos, Esq.